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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

TONIC WEAR, INC., a California corporation,	)	Case No. 305-cv-03484
	)	
Plaintiff,	)	<b>STIPULATED AND <del>PROPOSED</del></b>
	)	<b>PROTECTIVE ORDER</b>
vs.	)	
	)	
RLI INSURANCE COMPANY, an Illinois	)	
corporation, ,	)	
	)	
Defendant.	)	
	)	
	)	
_____ AND RELATED COUNTERCLAIMS.	)	
_____	)	

**PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action may involve the production of  
 confidential, proprietary, or private business information for which special protection from  
 public disclosure and from use for any purpose other than prosecuting or defending this action

1 would be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter  
2 the following Stipulated Protective Order (the "Order"). The parties acknowledge that this Order  
3 does not confer blanket protection to any material and that the protection afforded extends only  
4 to the limited material properly designated as confidential under applicable legal principles.

5 The parties further acknowledge that this Order creates no entitlement to file confidential  
6 information under seal. Civil Local Rule 79-5 sets forth the procedures that must be followed  
7 and reflects the standards that will be applied when a Party seeks permission from the Court to  
8 file material under seal.

### 9 **TERMS OF PROTECTIVE ORDER**

10 1. As hereinafter used, the term "CONFIDENTIAL" refers to any information that is  
11 proprietary, trade secret or confidential business information and that is designated by a party as  
12 "CONFIDENTIAL." Material designated for protection shall be designated so as to make it clear  
13 what is being designated as "CONFIDENTIAL." The term "CONFIDENTIAL" shall not  
14 include any information that is or becomes public knowledge, was disclosed by a third-party, or  
15 was obtained independent of this action. Nothing in this Order precludes the parties from  
16 disclosing "CONFIDENTIAL" information to the Court in compliance with the terms of this  
17 Order.

18 2. All materials marked "CONFIDENTIAL," and any copies of any document that  
19 has been designated as CONFIDENTIAL as specified herein, any excerpt, quotation, paraphrase,  
20 summary, or other description thereof that conveys the contents thereof, may be used by the  
21 receiving party only for the purposes of this action, and are subject to the terms of this Order.

22 3. A party may designate material as "CONFIDENTIAL" only when the designating  
23 party contends, in good faith, that the material is proprietary, trade secret or confidential business  
24 information warranting protection under the law. The "CONFIDENTIAL" designation shall be  
25 made at or prior to the time of production or receipt of documents (or the giving of testimony or  
26 other information) or as soon thereafter as practicable, but in no event more than five (5)  
27 business days after production or receipt of "CONFIDENTIAL" material, and shall clearly  
28 appear on the material, or portion thereof, designated as "CONFIDENTIAL." Upon receipt of a

1 deposition transcript, the party representing the deponent has five (5) business days to provide  
2 written notice to the party that took the deposition of any alterations relating to prior designation  
3 of any portion of the deposition transcript as "CONFIDENTIAL." Any notice of a change in  
4 designation of a portion of a deposition transcript previously marked as "CONFIDENTIAL"  
5 must be accompanied by a disclosure of the exact pages and lines that are to be designated  
6 "CONFIDENTIAL." Any party has the right to object to any "CONFIDENTIAL" designation  
7 as set forth in this Order

8 4. Responses to interrogatories, requests for admission, documents and videotapes  
9 are subject to this Order if prominently marked "CONFIDENTIAL." In the case of responses to  
10 interrogatories and responses to requests for admissions, only the specific material that the  
11 disclosing party asserts is confidential shall be marked as such. In the case of deposition answers  
12 embodying confidential information, counsel for the party from whom confidential information  
13 is sought shall designate the confidential portions of a witness's testimony by a statement on the  
14 record, either before the beginning of the confidential portion, at the end of the confidential  
15 portion, at the beginning of the deposition, or at the end of the deposition. As to any transcript  
16 containing testimony designated "CONFIDENTIAL", the private certified shorthand reporter  
17 shall prominently indicate on the cover of the transcript that the transcript contains  
18 "CONFIDENTIAL" testimony. The shorthand reporter shall also create a separate page  
19 immediately before any portion of the deposition transcript designated as "CONFIDENTIAL"  
20 that reads "BEGINNING OF 'CONFIDENTIAL' TESTIMONY" and a separate page  
21 immediately after any portion of the deposition transcript designated as "CONFIDENTIAL" that  
22 reads "END OF 'CONFIDENTIAL' TESTIMONY," such that all "CONFIDENTIAL"  
23 testimony appearing in the transcript is clearly identifiable in advance. To the extent possible,  
24 the shorthand reporter shall also clearly identify portions of the transcript that contain  
25 "CONFIDENTIAL" testimony in the table of contents of the transcript. With regard to  
26 videotape(s), CD(s) or DVD(s) of depositions in which any testimony therein is designated as  
27 "CONFIDENTIAL", the videographer shall clearly and prominently mark any tapes, CDs or  
28 DVDs that contain material designated as "CONFIDENTIAL" by indicating that "THIS [TAPE,

1 CD or DVD] CONTAINS 'CONFIDENTIAL' TESTIMONY" and shall also indicate the  
2 location of such material on the media to the greatest extent possible, for example by labeling the  
3 tape, CD or DVD with the times at which "CONFIDENTIAL" testimony appears.

4 5. All "CONFIDENTIAL" material shall be retained by counsel and shall not be  
5 disclosed by counsel to anyone except to the following persons:

6 A. Current officers and former employees of the parties to whom it is  
7 necessary that the designated material be shown for purposes of this action. To the extent that  
8 either party intends to disclose CONFIDENTIAL material to a former employee, that party will  
9 provide advance notice to the designating party and will seek approval before disclosing  
10 "CONFIDENTIAL" material;

11 B. Attorneys of record, their partners and associates and other counsel  
12 employed in connection with this action;

13 C. Independent experts and/or consultants engaged by counsel to furnish  
14 technical or expert services or to give testimony with respect to the subject matter of this action;

15 D. Persons engaged by the parties' attorneys to assist in this action, including  
16 any certified shorthand reporters, professional photocopy or microfilm services, secretaries,  
17 paralegals, law clerks, file clerks or other office personnel or temporary office personnel;

18 E. Any witness; and

19 F. Any judicial officer, discovery referee, arbitrator, mediator, court  
20 employee or juror assigned to work on this case in connection with this action.

21 6. Unless modified by written agreement of counsel or court order, only those  
22 persons authorized by this order to receive "CONFIDENTIAL" information and certified  
23 shorthand reporters and video operators may be present during portions of depositions designated  
24 "CONFIDENTIAL." All persons given access by counsel to confidential information under  
25 Paragraph 6 (C) or (E), shall complete and sign a copy of the form agreement attached hereto as  
26 Exhibit "A." Such restrictions, however, shall not apply to information which at or prior, to  
27 disclosure thereof in this action is or was public knowledge or was otherwise disclosed by a  
28 third-party, or which, after disclosure thereof, becomes public knowledge or is disclosed by a

1 third-party, or which was or becomes known to the receiving party from a source other than the  
2 disclosing party. This paragraph does not apply to the Court, its employees, or court reporters  
3 employed or contracted by the Court.

4 7. A party that seeks to file under seal any "CONFIDENTIAL" information must  
5 comply with Civil Local Rule 79-5.

6 8. Any party may challenge a "CONFIDENTIAL" designation by serving a written  
7 objection in good faith that the material is not properly designated as "CONFIDENTIAL."  
8 Within 5 court days of this objection, the party asserting confidentiality shall identify in writing  
9 the basis for the asserting confidentiality, which may include an applicable privilege, statute, law  
10 or any other justification or basis for its designation. If the designating party does not respond,  
11 the material will not be deemed "CONFIDENTIAL", despite any marking on the material. If the  
12 parties cannot, despite a good faith meet and confer effort, resolve their differences concerning  
13 the protection to be afforded to the material, the designating party may bring a noticed motion  
14 before the Court requesting that the "CONFIDENTIAL" designation remain in place. If no such  
15 motion is made within 25 days of service of the original objection, the material will be deemed to  
16 not be "CONFIDENTIAL" despite any marking on the material. If such a motion is brought, the  
17 restrictions of this Order and the "CONFIDENTIAL" status of the material will remain in place  
18 until the Court decides the matter.

19 9. Nothing in this Order shall be deemed a waiver of the right of any party to oppose  
20 production of any information or documents for any reason whatsoever.

21 10. Nothing contained herein shall restrict any party from introducing material  
22 designated "CONFIDENTIAL" at trial; however, the designating party may seek a protective  
23 order prior to trial with respect to specific CONFIDENTIAL documents that may be marked as  
24 exhibits at trial.

25 11. Should either party receive a subpoena or other legal process, or service requiring  
26 disclosure of another party's "CONFIDENTIAL" material, the receiving party will immediately  
27 notify the designating party in writing of said subpoena, legal process or service, in order to  
28 provide the designating party an opportunity to seek and secure a protective order or other

1 appropriate order or stipulation precluding the disclosure of “CONFIDENTIAL” material, and  
2 the party who has been requested to disclose such information will reasonably cooperate with the  
3 party seeking to preclude disclosure. Nothing in this Order shall be deemed to prohibit any  
4 person subject to its terms from complying with lawful process or other legal obligations.

5 12. Within thirty (30) days after the final determination of this action (including all  
6 appeals), all persons subject to the terms hereof shall destroy all material designated  
7 “CONFIDENTIAL” in addition to all copies thereof, and shall also destroy all other outlines,  
8 summaries, abstracts, compilations, memoranda and other documents, embodying or concerning  
9 “CONFIDENTIAL” information or materials, except that each party may retain one (1) copy of  
10 all “CONFIDENTIAL” materials, including all hearing exhibits, deposition exhibits, and papers  
11 submitted to the Court, solely for reference or use in case a dispute arises over the use of  
12 “CONFIDENTIAL” material that is subject to this Order or over compliance with a decision of  
13 the Court in this action. After thirty (30) days have passed, upon the written request of either  
14 party, the other party must provide written confirmation within five (5) business days that it has  
15 complied with the terms and obligations of this paragraph.

16 13. Nothing in this Order shall be deemed to preclude any party from seeking, on an  
17 appropriate showing, additional protection with respect to the confidentiality of any information  
18 or documents.

19 14. Nothing in this Order shall limit any party in the use of its own documents or  
20 from disclosing its own CONFIDENTIAL documents and information, although any such use or  
21 disclosure not in compliance with the provisions of this Order will waive the protection provided  
22 by this Order.

23 15. Nothing in this Order shall be deemed to preclude or limit in any way the use  
24 during the trial of this action of material designated as “CONFIDENTIAL”.

25 16. The provisions of this Order regarding the use of “CONFIDENTIAL” information  
26 shall survive the termination of this action, unless otherwise agreed to by the parties or ordered  
27 by the Court.  
28

17. This Order may only be amended by a written stipulation executed by counsel of record for each party, or by an Order of the Court.

18. This Order may be executed in two or more counterparts, including facsimile counterparts, each of which will be deemed an original and all of which shall constitute the Stipulation among the parties.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.

Date: November 8, 2006

LINER YANKELEVITZ  
SUNSHINE & REGENSTREIF LLP

By: /S/  
Gregory A. Rutchik  
Joshua S Levenberg  
Attorneys for Plaintiff TONIC WEAR, INC.  
and Counter-defendants TONIC WEAR, INC.  
and KIRK THORNBY

Date: November 8, 2006

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By: /S/  
 Laura L. Goodman  
 Attorneys for Defendant and Counterclaimant  
 RLI INSURANCE COMPANY

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**ORDER**

GOOD CAUSE appearing therefore, it is so ordered.

Dated: \_ November 14, 2006

The Honorable Elizabeth Laporte  
Magistrate Judge





**EXHIBIT A**

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2  
3           1.       The person who signs below acknowledges that he or she has read and  
4 understands this Stipulated Protective Order (“Order”) and agrees to be bound by the terms and  
5 conditions of this Order.

6           2.       The person who signs below agrees not to disclose, and to use the documents or  
7 materials marked CONFIDENTIAL, and the information contained therein, solely for purposes  
8 of this action and in compliance with this Order, and acknowledges that the Court issuing this  
9 Order has personal jurisdiction of such matters and will enforce the terms and conditions of this  
10 Order.

11  
12  
13  
14 Dated: \_\_\_\_\_